

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 MARIA PIZARRO-OSORIO

4 Plaintiff

5 v.

CIVIL NO. 08-1404 (GAG)

6 COMMISSIONER OF SOCIAL SECURITY

7 Defendant

8
9 **MEMORANDUM OPINION AND ORDER**

10 Plaintiff, pursuant to 42 U.S.C. § 405(g), seeks judicial review of the final decision of the
11 Commissioner of Social Security denying her application for disability insurance benefits from
12 March 25, 1995 to December 31, 2000, date in which she last met insured status. Upon review of
13 the administrative record the court concludes that the Commissioner's decision is not supported by
14 substantial evidence, hence must be vacated.

15 Plaintiff filed the present claim for disability benefits on May 25, 2004, alleging disability
16 benefits as of March 25, 1995. Previously, she filed another claim on November 25, 1995, claiming
17 the same date of disability. This claim was denied by an administrative law judge ("ALJ") on
18 August 26, 1997, and subsequently by the Appeals Council on April 6, 1999. (Tr. 23).

19 In regards to the present claim, the ALJ found that plaintiff had a "severe combination of
20 impairments: bronchial asthma, and an affective disorder". (Tr. 25). He also found that said
21 impairment and symptoms "have more than minimal effect on the claimant's ability to perform basic
22 work related activities. Therefore, they constitute "severe impairments"." (Tr. 25). The ALJ then
23 went on to conclude that "the claimant had the residual functional capacity to work in a clear
24 environment involving the lifting of up to ten (10) pounds frequently and up to twenty (20) pounds
25 occasionally, sit for six (6) hours, during an 8-hour workday, and walk up to six (6) hours, during
26 an 8-hour workday." (Tr. 26). The ALJ also noted that plaintiff was diagnosed with major
27 depressive disorder; however, said evidence post-dated the last insured date of December 31, 2000.
(Tr. 27).

Civil 08-1404 (GAG)

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1 The commissioner in his memorandum of law (Dtk12 at page 9) notes that on January 29,
2 1996 a Disability Determination Services physician reviewed plaintiff's medical records on behalf
3 of the agency and completed a physical RFC assessment (Tr. 81-85). This is the only physical RFC
4 assessment of record. In the same, contrary to the ALJ's determination that a severe impairment was
5 present, Dr. Lorena Díaz Trancón determined that plaintiff had no exertional limitations. (Tr. 82).
6 The ALJ, thus must have either (i) discredited Dr. Díaz Trancón's medical determination, or (ii) seen
7 other more favorable evidence of disability. Notwithstanding, the ALJ, as a lay fact-finder, was not
8 at liberty to determine plaintiff's RFC as he did, without a proper medical basis in the record.
9 Rivera-Torres v. S.H.H.S., 837 F. 2d 47 (1st Cir. 1988). Here, no medical expert (examining or non-
10 examining) has reached the same RFC determination as the ALJ.¹

11 This case accordingly must be REMANDED to the Commissioner for further proceedings.
12 Specifically, the ALJ must properly determine plaintiff's RFC between the dates object of this
13 judicial review claim. The ALJ's final RFC determination must be based on a medical evidence of
14 record, that is, a proper RFC finding, physical and/or mental,² by a medical expert.

15 **SO ORDERED.**

16 In San Juan, Puerto Rico this 23rd day of December, 2008.

17
18 *S/Gustavo A. Gelpí*

19 GUSTAVO A. GELPI
20 United States District Judge
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22
23 ¹ The ALJ correctly noted that on June 16, 1996 the Commonwealth State Insurance Fund
24 granted plaintiff total disability. (Tr. 26, 305). The state agency documents, however, do not
25 provide a RFC determination which could in fact support the ALJ's exact conclusion.

26 ² The Court notes that on June 26, 1996 Dr. Enrique Vassallo personally evaluated plaintiff,
27 completed a psychiatric evaluation and diagnosed her with a dysthymic disorder (Tr. 108-111). The
ALJ, however, does not mention this in his decision, only noting that a diagnosis of major disorder
was not reached until after December 31, 2000 (Tr. 27).